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In the Supreme Court of the United States

October Term, 1958

LOCAL 107, HIGHWAY TRUCK DRIVERS AND HELPERS UNION, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONER,

v.

JOHN L. MCCLELLAN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The United States District Court for the District of Columbia, which denied petitioner's motion for a preliminary injunction, rendered no opinion. The United States Court of Appeals for the District of Columbia Circuit, which affirmed the order of the District Court, rendered no opinion.

JURISDICTION

The order of the Court of Appeals, issued on December 18, 1958, was entered on December 22, 1958. The petition for a writ of certiorari was filed on January 7, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the District Court and the Court of Appeals were correct in refusing to enjoin the Senate Select Committee on Improper Activities in the Labor and Management Field (the McClellan Committee) from permitting the District Attorney of Philadelphia County, Pennsylvania, to examine, inspect and copy petitioner's records and documents in the possession of the Committee.[1]

STATEMENT

On December 4, 1958, petitioner moved for a temporary restraining order and preliminary injunction seeking to enjoin the Senate Select Committee on Improper Activities in the Labor and Management Field (the McClellan Committee) from permitting the District Attorney of Philadelphia County, Pennsylvania, to inspect books and records in the possession of the Committee. The District Court for the District of Columbia denied the motion for a preliminary injunction [2] on the

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[1] Predicated on the accelerated filing of the petition and brief in opposition (as approved by Mr. Justice Brennan on December 29, 1958), respondents have agreed to continue an administrative stay, in effect since December 4, 1958, pending disposition of the petition for a writ of certiorari and, if certiorari is granted, to a stay pending disposition of the case on certiorari.

[2] A temporary restraining order was denied on December 4, 1958, by Judge Pine, and the motion for a preliminary injunction was denied by Judge Tamm on December 15.

ground that the court could not interfere with members of Congress acting in the discharge of their constitutional functions. On appeal, the Court of Appeals for the District of Columbia Circuit (Judges Edgerton, Bastian and Burger) by order issued on December 18, 1958, and filed on December 22, 1958, affirmed, without opinion the order of the District Court. While the petition seeks review of the order of the Court of Appeals of December 22, 1958, there are ancillary proceedings which are pertinent to the case.

On January 23, 1958, petitioner commenced proceedings against the seven Committee members to compel the Committee to return all books and records subpoenaed by the Committee for purposes of Committee hearings. As subsequently amended, the petitioner's complaint alleged, *inter alia*, that the Committee had completed their use of petitioner's records and documents. A motion to dismiss, on behalf of the Committee, was denied on July 21, 1958, and the Committee answered on September 15, 1958, admitting, *inter alia*, that the Committee had completed its use of petitioner's records and documents.

On May 2, 1958, the Commissioner of Internal Revenue issued a summons to petitioner and its Secretary-Treasurer, Raymond Cohen, as authorized by law under the provisions of the Internal Revenue Code, requiring the production for examination of petitioner's books and records in the Committee's possession. To enforce this administrative summons, the Commissioner of Internal Revenue brought an action in the Eastern District of Pennsylvania, seeking judicial enforcement of the administrative summons. On September 25, 1958, District Judge Welch entered an order directing that the Internal Revenue Service should have the authority

to examine, inspect, copy and photograph the books and records of petitioner. It was further ordered that petitioner and its Secretary-Treasurer, Raymond Cohen, should not remove or cause to be removed the records and documents from the custody of the Senate Committee until further order of the court. The order of September 25, 1958, is pending on appeal to the Court of Appeals for the Third Circuit.

Petitioner then moved for summary judgment in the action commenced on January 23, 1958, on the ground that continuing retention of its books and records was beyond the rightful authority of the Senate Committee. This motion was denied without prejudice on December 2, 1958, by District Court Judge Pine, on the ground that an order requiring respondents to return petitioner's records might interfere with the outstanding order of the District Court for the Eastern District of Pennsylvania.

On December 4, 1958, petitioner initiated the proceedings which culminated in the order of December 18 and 22, 1958, now before this Court on petition for a writ of certiorari.

ARGUMENT

1. There is presently in effect an order of the District Court for the Eastern District of Pennsylvania which, until further order of the court, precludes petitioner from removing from the Committee's possession the books and records subpoenaed by the Committee. Since the Committee has completed its use of the records and documents, in absence of this court order, the records and documents would be or would have been forthwith returned to petitioner. The question of whether the Committee is acting properly in permitting the District Attorney for Philadelphia County to inspect peti-

tioner's records is, in part at least, a consequence of a court order being appealed to the Court of Appeals for the Third Circuit and not involved in the present litigation. The fact situation underlying the present case thus arises as a result of a unique set of circumstances, the question involved is not likely to recur, and therefore the case lacks the over-all importance essential to warrant this Court's review.

2. (a) Moreover, the decision of the court below is clearly correct. Two district judges and three judges of the Court of Appeals have held that a court has no authority, in effect, to direct by the injunctive process a duly constituted Committee of the United States Senate [3] in the use and disposition of investigatory material which validly is in the Committee's possession.

Petitioner, in arguing to the contrary, understandably offers no authority for its position, requiring, as it does, a novel and substantial inroad upon the fundamental constitutional doctrine of separation of powers. The authority is, of course, all the other way. "[T]he general rule is that legislative action cannot be interfered with by injunction" [4] and in an unbroken line of authority courts have respected the rule.[5] *Hearst* v.

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[3] S. Res. 74, January 30, 1957, 85th Cong., 1st Sess., as amended by S. Res. 88, February 7, 1957, 85th Cong., 1st Sess.; S. Res. 221, January 29, 1958, 85th Cong., 2d Sess. In absence of Senate action in the current sesssion of Congress, the Committee will cease to exist on January 31, 1959 (S. Res. 221, *supra*).

[4] *McChord* v. *Louisville & Nashville R'd Co.*, 183 U.S. 483, 495.

[5] "* * * The prayer of the bill is that the committee be restrained from keeping the messages or making any use of them or disclosing their contents. In other words, that if we find that the method adopted to obtain the telegrams was an invasion of appellant's legal rights, we should say to the committee and to the Senate that the contents could not be disclosed or used in the exercise by the Senate of its legitimate functions. We know of

Black, 87 F. 2d 68 (C.A.D.C.); *Methodist Federation for Social Action* v. *Eastland*, 141 F. Supp. 729, three-judge court (D.D.C.); *Fischler* v. *McCarthy*, 117 F. Supp. 643 (S.D.N.Y.), affirmed, 218 F. 2d 164 (C.A. 2); *Mins* v. *McCarthy*, 209 F. 2d 307 (C.A.D.C.); *Kilbourn* v. *Thompson*, 103 U.S. 168; *State of Mississippi* v. *Johnson*, 4 Wall. 475; cf. *Lanza* v. *N.Y.S. Joint Legis. Comm.*, 3 N.Y. 2d 92.

(b) To avoid the impact of this settled judicial doctrine, petitioner suggests that, because the Committee's purpose in subpoenaing petitioner's records and documents has been served, the Committee is exceeding legislative bounds and its constitutional power if it permits a state law enforcement authority to examine the records and documents. For this reason, it is said, a court may properly interfere. The argument is without merit.

From the earliest times in its history, the Congress has performed an "informing function" of the kind petitioner apparently fears and asks a court to enjoin. See Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 168-194; see also: *Hearst* v. *Black*, *supra*; *Methodist Federation for Social Action* v. *Eastland*, *supra*. Many have believed that the informing function of Congress

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no case in which it has been held that a court of equity has authority to do any of these things. On the contrary, the universal rule so far as we know it, is that the legislative discretion in discharge of its constitutional functions, whether rightfully or wrongfully exercised, is not a subject for judicial interference.

"The Constitution has lodged the legislative power exclusively in the Congress. If a court could say to the Congress that it could use or could not use information in its possession, the independence of the Legislature would be destroyed and the constitutional separation of the powers of government invaded. * * *." *Hearst* v. *Black*, 87 F. 2d 68, 71-72

is second only to its direct legislative function. In a word, petitioner pitches its case on an unduly narrow view of a vital function of the legislative branch of the Government.

The Committee, in its investigation of petitioner, is clearly acting within the terms of its charter[6] which directs that the Committee "conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been, engaged in in the field of labor-management relations * * *." If the Committee, in the course of its investigation, has uncovered evidence of violations of law, its obligation to apprise the proper authorities is no less than the same obligation which rests upon a private citizen. The contemplated informative action by the Committee, of which petitioner complains, is in these circumstances no more an appropriate subject of judicial complaint than would be the reproduction of petitioner's records in the reports to the Senate to be rendered by the Committee,[7] and no more a proper subject for injunctive relief than would have been the public hearings conducted by the Committee. See, *Hearings, Select Committee on Improper Activities in the Labor or Management Field*, 85th Cong., 1st and 2d Sess., Pts. 27, 28.

(c) In the district court, petitioner acknowledged that "There is a way for these books to be secured [by the State] and these people [the Committee] aren't doing it in the proper fashion. We are trying to make them do it in a proper fashion." (Transcript, December 4, 1958, pp. 4-5). It is not, of course, a function

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[6] *Supra*, n. 3, p. 5.

[7] *Hearst* v. *Black*, *supra*, at p. 71; *Methodist Federation for Social Action* v. *Eastland*, *supra*.

of the courts to police the activities of Committees of Congress by the injunctive process. And petitioner's forebodings of irreparable harm (Pet. 6-7) that will allegedly flow from the Committee's action rest only upon the assumption that the District Attorney will use the information gleaned from the records for a purpose other than matters that are a legitimate concern of his office. The assumption is without record foundation or evidentiary support. In the absence of a more substantial showing of irreparable harm, even if conventional equitable principles were applicable, the courts below were, for this additional reason, clearly correct in denying injunctive relief.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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